

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on February 10, 1999 at 9:05 A.M., in Room 325 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Duane Grimes (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Walter McNutt (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Jodi Pauley, Committee Secretary  
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 357, 2/5/1999; SB 363,  
2/5/1999  
Executive Action: None

**HEARING ON SB 357**

**Sponsor:** SEN. BARRY "SPOOK" STANG, SD 36, St. Regis

**Proponents:**

**Mike Hashisaki, Sanders County Fair**

**Opponents:**

**Beth Baker, Dept. of Justice**

**Betty Waddell, MT Assoc. of Churches**

**Julie Ippolito, Don't Gamble with the Future**

**Sharon Hoff, MT Catholic Conference**

**Opening Statement by Sponsor:**

**SEN. BARRY "SPOOK" STANG, SD 36, St. Regis,** said this bill would allow video gambling at a county fair. The fair board in Sanders County is looking for ways to help pay for the infrastructure of their fairgrounds. Most fairs do allow some sort of gambling in one form or another. To allow poker machines in the beer garden where they would be restricted and watched would not be an expansion of gambling. The machines would either come from an existing bar in town or be leased from a route holder in the area. He referred to the Fiscal Note.

**Proponents' Testimony:**

**Mike Hashisaki, Sanders County Fair,** said county fairs in Montana are limited to 1.5 mills of tax support and most have facilities that were built well before WWII. To maintain these infrastructures is very difficult. The fair in Sanders County draws 30,000 - 40,000 people over the four day weekend. They can maintain salaries and minor repairs, but when it comes to the infrastructure repair they don't have the revenue. They looked at adding the gaming machines to the beer gardens. The people in Sanders County look at this as a way to pay for some repairs without the taxpayer doing it. This is not an expansion of gambling, because they will lease the machines from local businesses and they are looking for a type of revenue that they can depend on.

**Opponents' Testimony:**

**Beth Baker, Dept. of Justice,** gave testimony in behalf of **Jim Oppedahl, Administrator of the Gambling Control Division.**

**EXHIBIT(jus33a01)**

**Betty Waddell, MT Assoc. of Churches,** said they have a strong position in strengthening the family unit. They are concerned about the protection of children and the expansion of gambling. Most County Fairs are dominated by 4-H children who bring their animals and goods to be judged. Many of these children stay over night and a gambling unit would entice them into activities in which they shouldn't be involved. In this state 18 year olds can gamble and evidence shows that the younger they are the more they

will get addicted to gambling. This is an expansion of gambling. They are concerned with the language in section 4, page 2, line 30. Counties are becoming more addictive to gambling revenues. If they wish to provide revenue to the County Fairs they could do so without trying to create another situation in which they get more gambling revenues.

**{Tape : 1; Side : A; Approx. Time Counter : 9:16 a.m.}**

**Julie Ippolito, Don't Gamble with the Future**, rose in opposition of SB 357. **EXHIBIT**(jus33a02)

**Sharon Hoff, MT Catholic Conference**, said this bill is an expansion of gambling as it is going into an area where it currently doesn't exist. It sends a bad message to the family unit. Children are already getting addicted to Nintendo, etc. and they don't need the message from adults sitting in front of a machine that more gambling is okay. She said our county fairs don't need to turn into a miniature Las Vegas. Gambling affects an estimated 100,000 people in this state and they must be careful as to where they allow such gambling and the fair is not the proper place.

**Questions from Committee Members and Responses:**

**SEN. REINY JABS** asked if operators will bring their machines in to the fair? **Mike Hashisaki** said they have talked to several businesses in Sanders County that have the machines and would have no problem doing this.

**SEN. JABS** asked if it would be worth the small amount of money they are going to make? Most of the people that go to fairs are farmers and ranchers and 4-H children and will there be that many people who gamble? **Mike Hashisaki** said on Thursday and Friday it is definitely the Sanders County Fair for the 4-H. But by Friday afternoon most of the fair crowd is from Idaho, Washington, Oregon and Canada. He said they are looking for any source of funding to help their fairgrounds.

**SEN. MIKE HALLIGAN**, referred to the handout from Department of Justice, Gambling Control Division and asked for an explanation. **EXHIBIT (1) Rick Ask, Gambling Control Division's Audit and Tax**, said most fairs would lose money because of the permit fees.

**SEN. HALLIGAN** asked how much play time would the machines get opposed to when they are in a normal place. **Rick Ask**, said they used the average net daily income of each jurisdiction.

**SEN. HALLIGAN** asked if there is a fee when machines are leased? **Rick Ask** said normally there is a location agreement where the route operator and the leaser will agree to split the net income from the machines. Not all of this money would stay with the fair.

**SEN. HALLIGAN** stated he doesn't see anything in the bill that restricts these machines into a tent where children can't go, etc.. **SEN. STANG** said this is addressed on page 1, line 15.

**CHAIRMAN LORENTS GROSFIELD** referred to the Fiscal Note and asked if **SEN. STANG** agreed to those numbers and is this enough money to help these fairs. **SEN. STANG** said he thought it was enough money and he didn't think the Department of Justice understood the bill completely. The intent is to lease machines from people who had already paid the permit fees on the machine. This will still be an avenue that these local fairs can explore.

**CHAIRMAN GROSFIELD** said many counties have old infrastructures and is \$2000 to \$4000 really going to help. **Mike Hashisaki** said they compared how the local businesses did in Plains when the fair was there. The machines bring in a lot of revenue during this time with a high concentration of people in a short period of time. If the fair doesn't make any money off of this, they will not do it again.

**CHAIRMAN GROSFIELD** asked when the 4-H auction was? **Mike Hashisaki** said the auction is on Sunday.

**CHAIRMAN GROSFIELD** asked if the people from out-of-state participate in the auction. **Mike Hashisaki** said no, most of their buyers are from Missoula and local businesses.

**CHAIRMAN GROSFIELD** said if the infrastructure is falling apart it would not be hard to come up with a fund that people could donate back to the 4-H, etc. **Mike Hashisaki** said they would take that as a suggestion.

**SEN. HALLIGAN** asked if there is an entrance fee at Sanderss County Fair. **Mike Hashisaki** said there is only about two fairs in the state that don't charge an admission and they are one of them. The people that exhibit in open class and 4-H bring their items for free and it would be ludicrous to charge a fee to people who want to look at those items.

**SEN. JABS** asked if local merchants are going to donate their machines and are they giving up their proceeds by donating these

machines. **Mike Hashisaki** said they would try to take the machines from other businesses around the county, not from Plains.

**SEN. WALTER MCNUTT** asked if there are gaming machines owned by a bar and can they take them to the fair. Is this legal to move them? **Beth Baker** said currently the terms used in the bill are not the same as the terms used in the rest of the gambling code. Permit holder is not defined, and they would have to add more to this bill to allow a current licensed operator to loan or lease machines to the fair commission.

**Closing by Sponsor:**

**SEN. STANG** said this is another possible way for fairs to make some money. Local fair boards are going to look at this to see if it is going to be profitable or not. The fair in Sanders County brings a lot of economic development to Plains and this is not an expansion of gambling. He said he would hate to see them charge admission to the fair because many may refuse to go then.

*{Tape : 1; Side : A; Approx. Time Counter : 9:36 a.m.}*

**HEARING ON SB 363**

**Sponsor:** SEN. DOROTHY ECK, SD 15, Bozeman

**Proponents:**

Justice John Sheehy, Self  
Marietta Jaeger, Self,  
Ron Waterman, Self  
Eve Malo, Amnesty International  
Father John Darragh, Catholic Church  
Arlette Randash, Self  
Sharon Hoff, MT Catholic Conference  
Scott Crichton, ACLU  
William Hooks, Self  
Christine Kaufmann, MT Human Rights Network  
Betty Waddell, MT Assoc. of Churches  
Al Smith, MT Trial Lawyers

**Opponents:**

Beth Baker, MT Department of Justice

**Opening Statement by Sponsor:**

**SEN. DOROTHY ECK, SD 15, Bozeman,** said this bill will establish a moratorium on the execution of the death penalty. It is very difficult to deal with the death penalty. She said at the Constitutional Convention they debated as to whether to prohibit the death penalty in the Constitution. Most people in Montana, if educated, would say the death penalty should be abolished. By putting the death penalty in the Constitution they risked failure. During those years since then, the death penalty has been discussed in a more rational way. It is cheaper to keep people on death row rather than appealing, etc.. And there have been convicts on death row that have been found to be innocent. More people look at it as an issue that characterizes our society. The question is as a society, do they want to be vengeful? **EXHIBIT(jus33a03)**

**Proponents' Testimony:**

**Justice John Sheehy, Self,** said mistakes can be made in the assessment of the death penalty. Recently, he said there were two Indian boys who were sentenced to death for a murder. The prosecution withheld material evidence that would have been helpful to the Indian boys. The case went all the way to the Circuit Court of Appeals in San Francisco where it was discovered that the prosecution had withheld this evidence. The Indian boys were re-sentenced and not with the death penalty. If those boys would have been executed, the question would have arisen as to where the responsibility would lie. The only valuable gift is the gift of life. He said it has been estimated that 14 percent of the death penalty executions were wrongful. There are more and more people becoming opposed to the death penalty. The last two sections of the bill conflict with each other and there needs to be an amendment.

**Marietta Jaeger, Self,** said twenty-five years ago her youngest daughter was a kidnap murder victim while they were on vacation in Montana. This was her first experience with the death penalty and it was a horrible situation. She said in the end, she decided that to kill someone in her little girl's name would be to violate the goodness and sweetness that she was to her family. She said they would not have honored her daughter by another act of violence. It is not justice or healing for the victims family. The death penalty does not do what any of the victims had planned. It costs more than a lifetime of incarceration, innocent people have been killed, it is racist, and there is no proof that it is a deterrent for other criminals. People are ignorant about the reality of the death penalty. When people are asked if they are in favor of the death penalty the percentage is very high. But when people are asked if

they would rather have lifetime imprisonment with restitution the number of people who want the death penalty is even lower. People are realizing that what is being done in their name and tax dollars does not represent their own values and principles. There are better and more economic ways to protect communities without executing people. This is an opportunity for the people of Montana to explore the issue and decide with an informed conscious whether or not this is a practice they want done in their names and with their tax dollars.

***{Tape : 1; Side : A; Approx. Time Counter : 9:53 a.m.}***

**Ron Waterman, Self,** said currently in the State of Illinois they are calling for a moratorium as the seventh death penalty inmate has been found to have not committed the crime. The death penalty has no penal purpose and does not discourage crime. The death penalty is society's opportunity to retaliate against an offender to seek vengeance and it devalues human life. Criminals do not commit a capital crime through planning, etc. and it does not involve any cost benefit. Individuals who commit capital crimes are socially disabled, etc. Usually this social disconnect is the result of early childhood sexual and physical abuse. Spousal murder is the least likely crime to happen in capital punishment. Capital crimes are the result of the availability of firearms, drug and alcohol abuse. He said for every person that is on death row, he could walk across the campus of Montana State Prison and point out another individual who had committed an identical crime. Usually the individuals who are sentenced to death are strangers to the communities where the crimes occur. This is why spousal murder does not result in the death penalty because they are members of the community. Individuals who commit capital crimes are usually very poor, have inexperienced council, and no resources to defend themselves. He said once again they find that where experienced council is put in charge of a case, the death penalty is not given. Individuals who are sentenced to death are more likely a member of a racial minority. In Montana, with less than one percent being Africa American there is one out of six who is on death row. For a period of time they had two out of eight Native Americans on death row, although the population in the state is less than five percent. He stated in the last 20 years, five out of the 13 people sentenced to the death penalty in Montana have been overturned.

**Eve Malo, Amnesty International,** said they need time to educate themselves. She said when people grow up they accept the death penalty and the idea that it is a deterrent. She said Kansas found that it cost \$180,000 more for a crime in which the offender had been sentenced to the death penalty. This is a poor state and they need to think of the costs. She quoted from Thomas Jefferson.

**{Tape : 1; Side : B; Approx. Time Counter : 10:07 a.m.}**

**Father John Darragh, Catholic Church,** said society today has lost a sensitivity to life and anything can be disposed of if it is inconvenient. This affects life issues and promotes a sense of violence. He quoted John Paul II, in that human life must never be taken away even in the case of one who has done great evil. They have become a society that is very comfortable living with violence and they try to confront violence with violence. This does not make society respect life. The use of the death penalty usually causes the healing of the victim's families to be delayed if not impossible.

**Arlette Randash, Self,** said she has worked for years to abolish the death penalty. Man's dignity comes from being created by God in his image and likeness. Life is a gift and our human dignity deserves respect. Man's worth is not because of himself, but because of the one who gives life to him. Without dignity, man becomes simply an object to be manipulated. There is value in seeking a moratorium and gives people time to think and find different solutions to this problem. When a country reverts to death as a solution to its problems, it is admitting defeat.

**Sharon Hoff, MT Catholic Conference,** said with the death penalty they don't spend time with the issues. In Montana, they can prosecute children, mentally disabled, etc. and this must stop. Cost is another issue that the state should be concerned with. She stated they can't replace evil with evil. The more they witness violence as a society the more it becomes acceptable.

**Scott Crichton, ACLU,** turned in testimony in favor of **SB 363.**  
**EXHIBIT(jus33a04) EXHIBIT(jus33a05)**

**{Tape : 1; Side : B; Approx. Time Counter : 10:20 a.m.}**

**William Hooks, Self,** said death is different, not just in terms of the ultimate sanction that they impose, but also in the procedure. He said there are three stages in which the courts must appoint an attorney to represent someone who is facing the death penalty. The person who has been sentenced to death has an automatic appeal to the Montana Supreme Court and they cannot waive that. He said in 1993 a federal study concluded that in N. Carolina it costs about \$2 Million more to execute someone than house them for life. It costs \$3 Million in the state of Texas to execute someone. These cases are time and labor intensive.

**Christine Kaufmann, MT Human Rights Network,** said the death penalty is applied in a discriminatory manner against the poor, mentally disabled, and the racial minorities. The U.S. stands alone in



western industrial nations in enforcing the death penalty. The U.S. is ranked with such countries as China, Iran, Saudi Arabia, etc. that also have the death penalty.

**Betty Waddell, MT Assoc. of Churches**, turned in testimony for SB 363. **EXHIBIT**(jus33a06)

**Al Smith, MT Trial Lawyers**, said innocent people have been put to death in our names. He said it takes an average of six years to discover if someone on death row is innocent. The death penalty is only about retribution and revenge. He said we are not different from murderers by putting them to death and we become like them.

**Opponents' Testimony:**

**Beth Baker, MT Department of Justice**, said their department is concerned with the confusion that a moratorium may cause concerning litigation. She said, currently, they have six cases that involve capital sentences. She said section 2 of the bill indicates that the death sentence could not be imposed on those cases, but the saving clause in section 3 is the contrary. She said all six of these cases have been convicted and sentences upheld on appeal and are involved in other post conviction litigation. She questioned if this bill passed, would they be able to proceed with these cases with the ultimate resolution in which these sentences were imposed? If they had an individual who had exhausted all of his appeals would he have to wait until 2005 to be executed if the moratorium didn't pass? If the bill were determined not to apply to the pending cases there would be a situation in which certain offenders were determined that the death penalty was appropriate. Perhaps during the same time there are other people who have committed the same crime who would not get the death penalty because of this moratorium. They would have a period of five years in which the death penalty could not be imposed, but after that time it would go back into affect and this would create some difficulty by the courts. The moratorium is inconsistent with their efforts to reduce unnecessary delays in the death penalty. The interest of victims, society, or the offender would not be well served by a moratorium.

***{Tape : 1; Side : B; Approx. Time Counter : 10:35 a.m.}***

**Questions from Committee Members and Responses:**

**SEN. STEVE DOHERTY** asked if there was any statistics on sentence disparity in capital cases? **Ron Waterman** said he did not know of any study that had been done in Montana to see if the death penalty had been imposed disproportionately as to racial minorities. Those that the death penalty is imposed against is the same general group

of people from racial minorities, etc. This is why national statistics show that they are disproportionately assessing the death penalty. Of the 3560 individuals that are on death row, a majority of them are minorities.

**SEN. DOHERTY** said that Minnesota and North Dakota do not have capital punishment statutes. Is there any statistics from these states that indicates a difference in the murder rate amongst neighboring states. **Beth Baker** said she didn't know for sure.

**SEN. HALLIGAN** asked how this moratorium will affect cases that are pending or are already in the process. **William Hooks** said this is confusing and said he doesn't know what the resolution is for this problem. **John Sheehy** said the difficulty arises in the saving section and the preceding subparagraph. If the wording was such that the moratorium applies from the effective date then there would be no prosecutions for five years. The moratorium is more important for study.

**SEN. HALLIGAN** questioned the proportionality issue. **Beth Baker** said under current law the Supreme Court is required to consider the punishment imposed and determine whether the sentence of death is excessive or disproportionate to the penalty imposed in other cases. The court in its review will only look at cases with death penalty hearings to determine if the death penalty is proportionate or disproportionate to sentences in other cases.

**SEN. HALLIGAN** asked what their issue would be on an appeal. **Ron Waterman** said the proportionality issue is difficult because cases will be compared to death penalty and life sentence cases. However, the proportionality is not always fair in these issue as each case is different. The proportionality issue is difficult even if they compare death penalty sentences. The moratorium will not change this as many of the death penalty cases are reversed and they receive lesser sentences.

**SEN. HALLIGAN** asked if someone has a life sentence and are in maximum security what do they do in prison? **William Hooks** said an inmate in maximum security will have a small cell with a concrete bed with a mattress, sink and toilet. He said he doesn't know how often they get out, but about one hour a day. They do have TV and library, but no weight room privileges or anything like that.

**SEN. HALLIGAN** asked if a person is on maximum security the rest of his life, they are not being productive or helping society, how do they make them productive citizens. **Marietta Jaeger** said monies are being taken away from rehabilitative programs and prisons are becoming more punitive. She said she would like to see the money that is used to execute people to utilize programs that would help

these people. **Ron Waterman** said they keep all people who are convicted of a homicide in maximum security. But if they get their sentences changed or are on good behavior they are moved to lower security.

**SEN. DUANE GRIMES** said if the existence of the death penalty in Montana is indeed a deterrent and if it prevents just one meditated crime against a child, a spouse, etc. would not the existence of the death penalty in state policy be important? **Scott Crichton** said he has not seen proof of this. Studies show it is not a deterrent because often it is not premeditated. Murder rates have not changed since the death penalty has been imposed. States with death penalties have higher murder rates than those who do not.

**SEN. GRIMES** said he has seen or read of major crimes that have been committed intentionally by people that knew what their penalties would be. **Scott Crichton** said if one person is innocently put to death, does that impact someone else? It is all relative in how they view life. Premeditated actions are not supported by sociologists, criminologists or law enforcement and is not a deterrent factor.

**SEN. SUE BARTLETT** asked if the intent of this bill is to eliminate the carrying out of the death sentence for this moratorium, or is it to suspend litigation in capital cases. **Scott Crichton** said the intent would affect both. The value of debate over the next five years would change the law if it is indeed representative of government. **Ron Waterman** said he believed it would apply to both. It allows for a hearing if it is considered a capital crime and the death sentence can be imposed but not carried out during the period of the moratorium. **Sharon Hoff** said they work specifically on educating the community about these issues and this will give them time to do that and create some stability. **Betty Waddell** said the intent is that both the imposition of the death sentence would have a moratorium and any executions during this time would be put on hold.

*{Tape : 2; Side : A; Approx. Time Counter : 11:03 a.m.}*

**SEN. BARTLETT** asked how the legislation that they passed in 1997 was operating and what the budget implications are and how will this affect the moratorium. **Beth Baker** said the legislation last session was HB 222 which changed Montana's post conviction statutes. It also allowed Montana to take advantage of the federal anti-terrorism and effective death penalty act which put in place time lines for cases that reached federal court. She said with death penalty cases they have to pull one or two people to work on one case very intensively. In the 1997 legislation they asked for one additional attorney in the first year of the biennium and

another in the second part of the biennium. They were given about half of the requests and now they are asking for the other half of the funding request. The last component which hasn't become effective is the Montana Supreme Court would have to adopt standards for competency of council appointed to represent death row inmates in the post conviction process.

**SEN. BARTLETT** asked what are the consequences of the lack of resources, etc. and they cannot meet the expedited time lines at the point where they become effective? **Beth Baker** said she is not sure, but they would not meet deadlines and cases could move forward and the death sentence could still be imposed.

**SEN. BARTLETT** asked if they passed this bill what would the inner action be. **Beth Baker** said they would still attempt the litigation as though the sentence would be ultimately carried out. The courts might not move cases along rapidly though if they knew they had until 2005 to take effect.

**SEN. DOHERTY** said there is always the question of societal retaliation of retribution and has there been value for those types of capital crimes. **John Sheehy** said when he first got to the Supreme Court there was two death sentence cases before them and he wrote those opinions. He didn't like the death penalty, but that is what the law said and he knew he had to follow it. But after that he opposed all death penalty cases. Innocent people can be executed under the death penalty and it is not right for one man to die for the good of the county. The societal advantage of having the death penalty has not been proved.

*{Tape : 1; Side : A; Approx. Time Counter : 11:15 a.m.}*

**CHAIRMAN GROSFIELD** asked why are they dealing with a moratorium rather than abolishing the death penalty. **SEN. ECK** said if they tried to abolish the death penalty right now it would not happen. This is an opportunity to spend five years looking at these issues.

**Closing by Sponsor:**

**SEN. ECK** said they are trying to look at problems in the long term. She said they would like to live in a world where there are no capital offenses and this may help. She said many of our prisoners on death row have mental problems and have been abused as children. There are programs that can be looked at during this moratorium and studied for a better understanding of crimes.

**Discussion:**

**SEN. DOHERTY** said he was approached by the State Bar and would like

to have some changes to the state probate code to adopt uniform standards for administration of trusts and estates that other states have adopted. He would like to have a committee bill.

**Motion/Vote:** SEN. DOHERTY moved that a COMMITTEE BILL BE ADOPTED.  
**Motion passed unanimously 9-0.**

**Discussion:**

**CHAIRMAN GROSFIELD** said they have another committee bill authorizing drug testing. He urged members of the committee to look at this issue and give some input.

**Valencia Lane** said what is proposed is there would be an ingestion statute that says if a person ingests drugs, they are in violation of the law. There is also a detection section in the bill.

**ADJOURNMENT**

Adjournment: 11:25 A.M.

---

SEN. LORENTS GROSFIELD, Chairman

---

JODI PAULEY, Secretary

LG/JP

**EXHIBIT** (jus33aad)